

SITE SPECIFIC POLLUTION LIABILITY

THIS FORM INCLUDES CLAIMS MADE AND REPORTED COVERAGE. PLEASE READ THE ENTIRE FORM CAREFULLY.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the **Named Insured** shown in the Declarations, and any other person or organization qualifying as an **insured** under this policy. The words "we", "us", and "our" refer to the Company providing this insurance. Words and phrases that appear in bold have special meaning. Refer to Section **VIII. DEFINITIONS**.

This policy provides coverage on a discovery and/or claims made and reported basis. Coverage provided herein under the respective insuring agreements only applies to a **pollution condition** first discovered or **claim** first made against you and reported to us, in writing, during the **policy period** or, where applicable, the **extended reporting period**. **Defense costs** are subject to and shall erode the Limits of Insurance and any applicable **Self-Insured Retention**.

The coverages described below are in effect only if scheduled on the Declarations. Any coverage not shown on the Declarations or listed as "Not Provided" is not a part of this policy and is excluded.

The application and supplemental materials and information submitted therewith, are the basis of this policy and are incorporated into and constitute a part of this policy. Any materials and information received in application for the policy will be maintained on file with the Company and shall be deemed to be attached to the policy as if physically attached. It is agreed by all **insureds** that the statements in the application and supplemental materials are representations made on behalf of all **insureds**, that they are material, and that this policy is issued by the Company in reliance upon the truth of such representations. The policy includes all of the agreements existing between the **insureds** and the Company or any of its agents relating to this policy.

In consideration of the payment of the premium and the undertaking of the **insured** to pay the **Self-Insured Retention** as described herein, and subject to the Limits of Insurance of this insurance as set forth in the Declarations, and the exclusions, conditions, and other terms of this policy, the Company agrees with the **insured** as follows:

I. INSURING AGREEMENTS

1. COVERAGES

COVERAGE A – FIRST PARTY CLEANUP COSTS

To pay on behalf of the **insured** for **cleanup costs** in excess of the **self-insured retention** that the **insured** becomes legally obligated to pay as a result of a **pollution condition** on, at, under or migrating from a **covered location(s)**, provided that:

1. the **pollution condition** is first discovered during the **policy period** and reported to us, in writing, during the **policy period** or **extended reporting period**, if applicable, and
2. such **pollution condition** first commences on or after the **retroactive date**.

COVERAGE B – THIRD PARTY CLAIMS FOR CLEANUP COSTS, BODILY INJURY OR PROPERTY DAMAGE LIABILITY

To pay on behalf of the **insured** for **cleanup costs**, **loss from bodily injury or property damage**, and associated **defense costs**, in excess of the **self-insured retention** that the **insured** becomes legally obligated to pay as a result of a **claim** made against the **insured** by a third party, to the extent resulting from a **pollution condition** on, at, under or migrating from a **covered location(s)**, provided that:

1. the **claim** is first made against the **insured** during the **policy period**, and reported to us, in writing, during the **policy period** or, where applicable, **extended reporting period**, and
2. the **pollution condition** first commences on or after the **retroactive date**.

COVERAGE C – THIRD PARTY CLAIMS FOR NON-OWNED DISPOSAL SITE(S)

To pay on behalf of the **insured** for **cleanup costs, loss** from **bodily injury or property damage**, and associated **defense costs**, in excess of the **self-insured retention** that the **insured** becomes legally obligated to pay as a result of a **claim** made against the **insured** by a third party, to the extent resulting from a **pollution condition** on, at, under or migrating from a **non-owned disposal site(s)**, provided that:

1. the **claim** is made by a third party which is not an owner, operator or contractor of the **non-owned disposal site(s)**,
2. the **claim** is first made against the **insured** during the **policy period**, and reported to us, in writing, during the **policy period** or, where applicable, **extended reporting period**, and
3. the **pollution condition** first commences on or after the **retroactive date**.

COVERAGE D – THIRD PARTY CLAIMS FOR CONTINGENT TRANSPORTATION

To pay on behalf of the **insured** for **cleanup costs, loss** from **bodily injury or property damage**, and associated **defense costs**, in excess of the **self-insured retention** that the **insured** becomes legally obligated to pay as a result of a **claim** made against the **insured** by a third party, to the extent resulting from a **pollution condition** occurring during the course of **transportation** by a **carrier** to or from a **covered location(s)**, including any loading or unloading, provided that:

1. the **claim** is first made against the **insured** during the **policy period**, and reported to us, in writing, during the **policy period** or, where applicable, **extended reporting period**, and
2. the **pollution condition** first commences on or after the **retroactive date**.

2. DEFENSE COSTS FOR THIRD PARTY CLAIMS

We will have the right and duty to defend any **claim** to which this insurance applies. **Defense costs** shall be subject to and shall erode the Limits of Insurance and any applicable **Self-Insured Retention**. We may at our discretion investigate any **pollution condition** and adjust or settle any **claim** that may result. We will have no duty to defend the **insured** against any **claim** to which this policy does not apply. Our right and duty to defend shall cease when the applicable Limit of Insurance, as described in the Declarations and Section **IV. LIMITS OF INSURANCE** has been exhausted by payment of **defense costs, cleanup costs, or loss**.

II. EXCLUSIONS

This insurance does not apply to **cleanup costs, loss, claims** or associated **defense costs** based upon, arising out of, or relating to:

1. Asbestos

Any asbestos in any form, including but not limited to, asbestos containing products, asbestos dust, asbestos fibers or asbestos containing materials. This exclusion shall not apply to **cleanup costs** to the extent directly and solely attributable to asbestos or asbestos containing materials in soil or groundwater.

2. Business Interruption

Any **insured's** loss of use of any business, loss of income or profit, or consequential loss of any kind or nature to any business operation, unless specifically endorsed onto this policy.

3. Contractual Liability

The liability of others assumed by an **insured** in a contract or agreement. This exclusion shall not apply to liability that the **insured** would have in the absence of the contract or agreement or for liability it assumed under those contracts listed in the Schedule of Insured Contracts endorsement attached to this policy, if applicable.

4. Employer's Liability

Bodily injury to:

- a. An employee of the **insured** arising out of and in the course of:
 - (1) Employment by the **insured**; or
 - (2) Performing duties related to the conduct of the **insured's** business; or
- b. The spouse, child, parent, brother or sister of that employee as a consequence of Paragraph a. above.
- c. Damages based upon or arising under any workers compensation, unemployment compensation or disability benefits law or similar law.

This exclusion applies:

- (a) Whether the **insured** may be liable as an employer or in any other capacity; or
- (b) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

5. Financial Assurance

Any obligation to demonstrate or meet financial assurance or financial responsibility requirements under any federal, state or local law including any requirement that the **insured** obtain a bond. This exclusion shall not apply to any such obligation specifically provided by endorsement onto this policy, if any.

6. Fines and Penalties

Any criminal fine, criminal penalty, criminal assessment, punitive, exemplary or multiplied damages, or injunctive relief. This exclusion shall not apply to punitive damages where such coverage is allowable by law.

7. Insured vs. Insured

Claims or liability asserted by one **insured** against another **insured**.

8. Insured's Property

Property damage to real or personal property owned by, leased to, rented by, occupied, operated by, or loaned to an **insured**, or otherwise in the care, custody or control of any **insured**. This exclusion shall not apply to **cleanup costs** including **restoration costs**.

9. Internal Expense

Expenses incurred by the **insured** for services performed by employees of the **insured** or of any affiliate, parent, subsidiary, or entity with common ownership. This exclusion shall not apply to **emergency expenses**.

10. Lead-based Paint

Lead-based paint in, on, coming from or applied to any building or structure. This exclusion shall not apply to **cleanup costs** to the extent directly and solely attributable to lead-based paint in soil or groundwater.

11. Non-Disclosed Known Pollution Conditions

Pollution conditions known to exist prior to the inception of this policy, by any current or former officer, director, partner, or employee responsible for environmental affairs of the **insured**, which was not disclosed in writing to us in the application or supporting materials prior to the inception date of this policy. Any **pollution condition** disclosed in writing to us and not otherwise excluded under this policy is deemed to be discovered on the date a **covered location** is endorsed onto this policy.

12. Knowingly Wrongful Acts

The **insured's** dishonest, fraudulent, malicious, knowingly wrongful, deliberate disregard, or willful or intentional non-compliance with any law, statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body.

13. Nuclear Hazard

a. Bodily injury, property damage or cleanup costs:

- (1) With respect to which an **insured** under the policy is also an **insured** under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an **insured** under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2) Resulting from the **hazardous properties of nuclear material** and with respect to which:
 - (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
 - (b) the **insured** is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization

b. Bodily injury, property damage or cleanup costs resulting from the hazardous properties of nuclear material, if:

- (1) The **nuclear material**:
 - (a) is at any **nuclear facility** owned by, or operated by or on behalf of, an **insured**, or
 - (b) has been discharged or dispersed therefrom;
- (2) The **nuclear material** is contained in a **spent fuel or waste** at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an **insured**; or
- (3) The **bodily injury, property damage or cleanup costs** arises out of the furnishing by an **insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to **property damage** or **cleanup costs** to such **nuclear facility** and any property thereat.

As used in this exclusion:

- a. **Hazardous properties** include radioactive, toxic or explosive properties;
- b. **Nuclear material** means source material, special nuclear material or by-product material;
- c. **Source material, special nuclear material, and by-product material** have the meanings given them in the Atomic Energy Act of 1954 or any law amendatory thereof; **spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**;
- d. **Waste** means any waste material:
 - (1) Containing **by-product material** other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its **source material** content, and
 - (2) Resulting from the operation by any person or organization of any **nuclear facility** included under the first two paragraphs of the definition of **nuclear facility**.

e. **Nuclear facility** means:

- (1) Any nuclear reactor;
- (2) Any equipment or device designed or used for:
 - (a) separating the isotopes of uranium or plutonium,
 - (b) processing or utilizing **spent fuel**, or
 - (c) handling, processing or packaging **waste**;
- (3) Any equipment or device used for the processing, fabricating or alloying of **special nuclear material** if at any time the total amount of such material in the custody of the **insured** at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (4) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **waste**;

f. **Nuclear reactor** means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

g. **Property damage** includes all forms of radioactive contamination of property.

14. Products Liability

Arising out of **your product**, including but not limited to, goods or products manufactured, sold, handled, distributed, altered or repaired by the **insured** or by others trading under its name including any container thereof, or any reliance upon a representation or warranty made at any time with respect thereto occurring beyond the boundaries of a **covered location**. This exclusion includes, but is not limited to, any **property damage to your product**. This exclusion does not apply to Coverage D – Third Party Claims For Contingent Transportation.

15. Radioactive Matter

Any liability, in whole or in part, of whatever nature arising out of, resulting from, caused by or contributed by:

- a. Ionizing radiations from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel.
- b. The radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof.
- c. Any weapon or war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force of matter.

16. Underground Storage Tank(s)

Pollution conditions migrating from any **underground storage tank(s)** unless they are:

- a. Listed within the Storage Tank Coverage endorsement attached to this policy, if any; however, coverage for such tanks is limited to the terms and conditions of such endorsement;
- b. **Storage tank system(s)** which are removed prior to the inception date of this policy in accordance with all applicable Federal, State or Local regulations in effect at the time of closure;
- c. **Storage tank system(s)** that are situated in an enclosed underground area of a building or similar enclosed structure, in a basement, cellar or tunnel, if such tank is situated totally upon or above the surface of the floor and the related piping is not run underground; and,

d. **Storage tank system(s)** which are unknown by an **insured** as of the inception date of this policy.

As to Coverages A and B, however, this exclusion does not apply with respect to any **pollution condition** migrating onto a **covered location** from an **underground storage tank(s)** not located on a **covered location**.

17. War

Any liability of whatever nature arising out of, resulting from, caused by or contributed to by:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by a government, sovereign or other authority using military personnel or agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

III. REPORTING, DEFENSE, SETTLEMENT & COOPERATION

1. Duties in the Event of a Pollution Condition

You must see to it that we are notified as soon as possible, after an **insured** first becomes aware of a **pollution condition** which may result in **cleanup costs**, a **claim**, or in any administrative, governmental, legal action or proceeding to impose an obligation on the **insured** for **cleanup costs**. You shall cooperate and assist us, upon our request and without charge, in the enforcement of any right against any person or organization which may be liable to the **insured** because of cleanup, injury or damage to which this insurance may also apply. Notice shall include:

- a. How, when and where the **pollution condition** or **emergency expense** took place;
- b. The names and addresses of any injured persons and witnesses; and
- c. The nature and location of any injury or damage arising out of the **pollution condition** or **emergency expense**.

Notice of a **pollution condition** or of **cleanup costs** is not notice of a **claim**.

2. Duties in the Event of a Claim

If a **claim** is made or **suit** is brought against any **insured** or any legal action is initiated, you must see to it that we receive written notice of the **claim**, **suit** or action as soon as possible, but in any event, during the **policy period** or extended reporting period, if applicable.

You and any other involved **insured** must:

- a. Send us copies of any demands, notices, summonses or legal papers received in connection with the **claim** or **suit** as soon as possible;
- b. Authorize us to obtain records and other information;
- c. Cooperate with us in the investigation or settlement of the **claim** or defense against the **suit**; and
- d. Assist us, upon our request and without charge, in the enforcement of any right against any person or organization which may be liable to the **insured** because of injury or damage to which this insurance may also apply.

3. Voluntary Payments

No **insured** will, except at that **insured's** own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid and **emergency expenses**, without our consent. In the event that the **insured** incurs **emergency expenses**, the **insured** shall provide notice to the Company within ten (10) days of the first commencement of the **pollution condition** for which the **emergency expenses** have been incurred.

Upon the discovery of a **pollution condition** or incurring **emergency expenses**, the **insured** shall make every attempt to mitigate any **loss** and comply with the applicable environmental laws. The **insured** shall have the responsibility and duty, to select, retain, and oversee contractors or consultants to perform any investigation and/or remediation of any **pollution condition** to which this insurance applies. The **insured** must cooperate with the Company and receive approval in writing of the selection and retention of qualified contractors or consultants.

4. Defense, Settlement & Cooperation

The Company shall have the right and the duty to assume the investigation, adjustment or defense of any **claim**. It is further agreed that the Company may make such investigation of any **claim** as it deems expedient, but the Company shall not be obligated to pay any **loss**, **cleanup costs**, or to defend or to continue to defend any **claim** after the applicable limits of the Company's liability have been exhausted by payment of **defense cost**, **cleanup costs**, or **loss**. **Defense costs** shall be subject to and shall erode the Limits of Insurance and any applicable **self-insured retention**. We will have no duty to defend the **insured** against any **claim** to which this policy does not apply.

The **insured** shall cooperate with the Company and offer all reasonable assistance in the investigation of **pollution conditions** and the defense of **claims** under the applicable coverages purchased. The Company may require that the **insured** submit to examination under oath, and attend hearings, depositions and trials. In the course of investigation or defense, the Company may require written statements or the **insured's** attendance at meetings with the Company. The **insured** must assist the Company in effecting settlement, securing and providing evidence and obtaining the attendance of witnesses.

The **insured** shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution, or apportionment which the **insured** may have.

In the event the **insured** is entitled by law to select independent counsel to defend it, the following shall apply:

- a. The attorney fees and all other litigation expenses we must pay to that counsel are limited to the rates we would actually pay to counsel that we retain in the ordinary course of business in the defense of similar **claims** or **suits** in the community where the **claim** or **suit** arose or is being defended.
- b. We may exercise the right to require that such counsel have certain minimum qualifications with respect to their competency, including experience in defending **claims** or **suits** similar to the one pending against the **insured**, and to require such counsel to have errors and omissions insurance coverage. With respect to any such counsel, the **insured** agrees that counsel will timely respond to our request for information regarding the **claim** or **suit**. The **insured** may at any time waive its right to select independent counsel.

The Company shall not settle any **claim** without the consent of the **insured**. If, however, the **insured** shall refuse to consent to any settlement recommended by the Company and shall elect to contest the **claim** or continue any legal proceedings in connection with such **claim**, then the Company's liability for the **claim** shall not exceed the amount for which the **claim** could have been settled plus **defense costs** incurred up to the date of such refusal. Such amounts are subject to the Limits of Insurance and **self-insured retention** provision of the policy.

IV. LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. **Insureds;**
 - b. **Covered locations;**
 - c. **Claims** made or **suits** brought; or
 - d. Persons or organizations making **claims** or bringing **suits**.
2. The Total All **Pollution Conditions** and Claims Limit set forth on the Declarations is the most we will pay for the sum of:
 - a. All **cleanup costs** under Coverage A; and
 - b. All **claims** for **cleanup costs** or for **loss** because of all **bodily injury** or **property damage**; and
 - c. All associated **defense costs** incurred for **claims**.
3. Subject to 2. above, the Per Pollution Condition Limit set forth on the Declarations is the most we will pay for the sum of:
 - a. All **cleanup costs** under Coverage A; and
 - b. All **claims** for **cleanup costs** or for **loss** because of **bodily injury** or **property damage**; and
 - c. All associated **defense costs** incurred for **claims**

arising from any one **pollution condition** as referenced in 5. below, regardless of the number of coverages that may apply.
4. Subject to 2. and 3. above, the Coverage Section Limit set forth on the Declarations or under an applicable endorsement is the most we will pay under each individual coverage section for the sum of all **cleanup costs**, **claims**, **loss** and associated **defense costs** incurred under each applicable coverage section stated on the Declarations, or incurred under each other applicable coverages afforded under any endorsements attached thereto.

5. MULTIPLE POLLUTION CONDITIONS OR CLAIMS

All continuous or related **pollution conditions** also reported to the Company under a subsequent policy issued by the Company or its affiliates, providing substantially the same coverages as this policy, shall be deemed to have been first discovered and reported during this **policy period** and shall be subject to the same Limit of Insurance. All **claims** and reports of **pollution conditions** made during one or more **policy periods** issued by the Company or its affiliates, providing substantially the same coverages, resulting in **bodily injury**, **property damage** or **cleanup costs**, or in any combinations thereof, and arising out of the same, or continuous or related **pollution conditions**, shall be considered one **pollution condition** and will be subject to the same Per Pollution Condition Limit and one **self-insured retention**. Such **claims** or reports of **pollution conditions** shall be deemed first reported to the Company during the **policy period** in which the first such **claim** or report of **pollution condition** was reported to the Company or an affiliate and will be subject to the Per Pollution Condition Limit and **self-insured retention** applicable to that **policy period**.

Coverage under this policy for such **pollution conditions** or **claims** shall not apply unless, at the time such **pollution conditions** were first discovered and reported or **claim** was first made and first reported, the **insured** has maintained with the Company or its affiliates Site Specific Pollution Liability coverage providing substantially the same coverages on a continuous, uninterrupted basis since the first such **claim** made against the **insured** and reported or first **pollution condition** was discovered and reported to the Company.

V. CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the **insured** or of the **insured's** estate will not relieve us of our obligations under this policy.

2. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the Company from asserting any rights under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued by the Company to form a part of this policy.

3. Choice of Law

The **insured** and the Company agree that all matters or disputes arising hereunder, including any questions relating to the validity, interpretation, performance, and enforcement of this policy, the meaning, interpretation or operation of any term, condition, definition or provision, or the fulfillment of any party of any obligation with respect to the policy, shall be determined in accordance with the law and practices of the State of New York without giving effect to New York conflict of law principles.

4. Choice of Forum

The **insured** and the Company agree that in the event a dispute arises under the policy relating to the validity, interpretation, performance, and enforcement of the policy, the meaning, interpretation or operation of any term, condition, definition or provision, or the fulfillment of any party of any obligation with respect to the policy, all litigation shall take place in the State of New York, and that all parties shall submit to the jurisdiction of any court of competent jurisdiction within the State of New York, including federal courts, and will comply with all the requirements necessary to give such court jurisdiction. In the event of arbitration or other forms of dispute resolution, such resolution shall take place in the State of New York. Nothing in this clause constitutes or should be understood to constitute a waiver of the Company's rights to remove an action to a United States District Court.

5. Coverage Territory

The coverage provided under this policy shall apply to **covered location(s)** located:

- a. Within the United States of America (including its territories and possessions), Puerto Rico and Canada; or
- b. Within all other parts of the world, if the **insured's** responsibility to pay damages is determined in a legal action or **suit** on the merits, in any court of competent jurisdiction within the territory described in a. above or in a settlement we agree to, however, whenever coverage provided by this policy would be in violation of U.S. export controls or trade sanctions, such coverage is null and void.

6. Headings

The descriptions in the headings of this policy are solely for convenience and form no part of the policy terms and conditions.

7. Inspection and Audit

- a. We may examine and audit your books and records as they relate to this policy at any time during the **policy period** and up to three (3) years after the end of the **policy period**;
- b. We may be permitted but not obligated to, interview persons employed by the **insured**; and
- c. We shall be permitted, upon reasonable prior notice, but not obligated, to inspect, sample and monitor the **insured's covered location(s)** during the **policy period** or any time thereafter. Neither our right to make inspections, sample and monitor nor the actual undertaking thereof nor any report thereon shall constitute

an undertaking, on behalf of the **insured** or others, to determine or warrant that **covered location(s)**, **storage tank system(s)**, property or operations are safe, healthful or conform to acceptable engineering practice or are in compliance with any law, rule or regulation. The **insured** agrees to provide appropriate personnel to assist our representatives during any inspection.

8. Legal Action Against Us

No person or organization has the right under this policy:

- a. To join us as a party or otherwise bring us into a **suit** asking for damages from an **insured**; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an **insured**; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the **insured** and the claimant or the claimant's legal representative. For purposes of this condition, a consent judgment, stipulated judgment, agreed judgment, consent decree or consent order reached without our written agreement is neither an agreed settlement nor a final judgment.

9. Material Change in Risk

The **insured** must notify the Company, in writing, within sixty (60) days of any change in operations at the **covered location(s)** which materially increases the risk from that originally assumed by the Company at policy inception.

10. Other Insurance

If other valid and collectible insurance is available to any **insured** covering **cleanup costs**, **claims**, **defense costs** or **loss** also covered by this policy, other than a policy that is specifically written to apply in excess of this policy, the insurance afforded by this policy shall apply in excess of, and shall not contribute with, such other insurance. The **insured** shall promptly, upon the request of the Company, provide the Company with copies of all such policies or documentation.

11. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

12. Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first **Named Insured**, this insurance applies:

- a. As if each **insured** were the only **insured**; and
- b. Separately to each **insured** against whom a **claim** is made or **suit** is brought.

13. Sole Agent

The **named insured** shown in the Declarations shall act on behalf of, and serve as the sole agent for all **insureds** with respect to the return or payment of any premiums or retained amounts, the issuance by the Company of the policy, the receipt or acceptance of any endorsements issued to form a part of the policy or the receiving of any notices from the Company required by this policy.

14. Subrogation

In the event of any payment under this policy by the Company, the Company shall be subrogated to all of the rights of recovery against any person or organization, and the **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **insured** shall do nothing to prejudice such rights.

Any recovery as a result of subrogation proceedings arising out of the payment of **loss** or **cleanup costs** covered under this policy shall accrue first to the **insured** to the extent of any payments in excess of the limit of coverage; then to the Company to the extent of its payment under the policy; and then to the **insured** to the extent of its **self-insured retention**. Expenses incurred in such subrogation proceedings shall be apportioned among the interested parties in the recovery in the proportion that each interested party's share in the recovery bears to the total recovery.

15. Transfer of Policy

This policy shall be void if assigned or transferred without our written consent.

VI. CANCELLATION AND NON-RENEWAL

1. Cancellation

- a. This policy may be cancelled by the first **Named Insured** shown in the Declarations by surrendering the policy to us or by mailing or delivering written notice to us stating when the cancellation date shall be effective.
- b. This policy may be cancelled by us for the following reasons:
 - (1) non-payment of premium;
 - (2) material misrepresentation or fraud by you;
 - (3) material change in the use or operation of a **covered location(s)** from the use contemplated in the Application and/or supporting materials which result in a materially increased likelihood of **claims** or **pollution conditions** without prejudice to other remedies; or
 - (4) the **insured's** failure to comply with the terms and conditions under this policy including the failure to pay any **self-insured retention** amount when due;

by mailing to the first **Named Insured**, at the last known address, written notice of not less than ten (10) days if cancellation is for either reasons (1) or (2) above, or sixty (60) days if cancellation is for either reasons (3) or (4) above. Proof of mailing of notice shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall be the end of the **policy period**.

In the event of a notice of cancellation from us from item b.(3) above, the **insured** will have sixty (60) days from the date of the notice to remedy such failure to comply that is the cause for cancellation. If the remedy is satisfactory to us, in our sole discretion, during the applicable notice period, we will rescind the notice of cancellation with a written confirmation to the first **Named Insured** that the policy shall remain in place.

- c. The minimum earned premiums due for this policy shall be calculated in accordance with the following:
 - (1) The minimum earned premium due for this policy is the percentage shown on the Declarations page of this policy.
 - (2) In the event of cancellation of this policy by the **Named Insured** after this policy has been in effect for more than ninety (90) days, the return premium due, if any, shall be computed at a rate equal to ninety percent (90%) of the pro-rata unearned policy premium.
 - (3) In the event of cancellation of this policy by the Company for reasons other than nonpayment of premium, the earned premium for this policy shall be computed on a pro-rata basis.

(4) Premiums applicable to any subsequent endorsements will be in addition to the minimum premium shown in the Declarations page of this policy.

2. Nonrenewal

If we decide not to renew or continue this policy, we will mail notice of nonrenewal to you at the last known address appearing in our records. Notice will be mailed thirty (30) days before the end of the **policy period**. Proof of mailing of notice shall be sufficient proof of notice.

VII. EXTENDED REPORTING PERIODS

1. An **insured** shall be entitled to an automatic **extended reporting period**, and the **Named Insured** may be entitled to purchase an optional **extended reporting period** upon cancellation or non-renewal of the policy, unless cancellation or non-renewal is for one of the reasons set forth in **Section VI, 1.b.** above. The automatic and optional **extended reporting periods** are more fully described in Paragraphs 2 and 3 below. If the **Named Insured** renews this policy, the **Named Insured** shall be entitled to a renewal **extended reporting period**, as described more fully below in Paragraph 4. The automatic, the optional or the renewal **extended reporting periods** shall not reinstate or increase any of the Limits of Insurance of this policy, extend the **policy period** or change the scope of coverage provided.

2. Automatic Extended Reporting Period

Solely with respect to a **claim**, provided: (i) that the **Named Insured** has not renewed this policy or purchased any other insurance to replace this insurance which applies to a **claim or pollution condition(s)** otherwise covered by this policy; and, (ii) the **Named Insured** has not purchased the optional **extended reporting period** available under **Paragraph 3.** of this Section, an **insured** shall have the right to the following: a period of sixty (60) days following the effective date of such cancellation or non-renewal of the policy, unless cancellation or non-renewal is for one of the reasons set forth in **Section VI, 1. b.** above, in which to provide written notice to the Company of **claims** first made against the **insured** during the **policy period**. Such a **claim** reported to the Company within the automatic **extended reporting period** will be deemed to have been made and reported on the last day of the **policy period**, provided that the **claim** arises from a **pollution condition** that commenced before the end of the **policy period** and is otherwise covered by this policy. No part of the automatic **extended reporting period** shall apply if the optional **extended reporting period** is purchased.

3. Optional Extended Reporting Period

The **Named Insured** shall be entitled to purchase an optional **extended reporting period** upon cancellation or non-renewal of the policy, unless cancellation or non-renewal is for one of, the reasons set forth in **Section VI, 1. b.** above, as follows: (i) A **claim** first made against the **insured** and reported to the Company within the optional **extended reporting period**, if purchased in accordance with the provisions contained in Paragraph ii. below, will be deemed to have been made and reported on the last day of the **policy period**, provided that the **claim** arises from a **pollution condition** that commenced before the end of the **policy period** and is otherwise covered by this policy; and (ii) The Company shall issue an endorsement providing an optional **extended reporting period** of up to thirty-six (36) months from termination of coverage hereunder for all **covered location(s)** or any specific **covered location** provided that the **Named Insured**: (a) makes a written request for such endorsement which the Company receives within thirty (30) days after termination of coverage as defined herein; and (b) pays the additional premium when due. If that additional premium is paid when due, the **extended reporting period** may not be cancelled, provided that all other terms and conditions of the policy continue to be met.

For purpose of the optional **extended reporting period** cancellation or non-renewal of coverage occurs at the time of cancellation or non-renewal of this policy by the **Named Insured** or by the Company, or at the time of the Company's deletion of a location which previously was a **covered location**, if earlier. The optional **extended reporting period** is available to the **Named Insured** for not more than 200% of the full policy premium stated in the Declarations.

4. Renewal Extended Reporting Period

Provided that the **Named Insured** has renewed this policy with the Company or an affiliate of the Company designated by the Company, an **insured** shall have the right to the following: a period of sixty (60) days

following the expiration of this policy's **policy period** in which to provide written notice to the Company under this policy's **policy period** of **claims** first made against the **insured** within thirty (30) days prior to the expiration of this policy's **policy period** or a **pollution condition** first discovered within thirty (30) days prior to the expiration of this policy's **policy period**. A **claim** first made against the **insured** within thirty (30) days prior to the expiration of the policy's **policy period** or a **pollution condition** first discovered within thirty (30) days prior to the expiration of the **policy period** and which **pollution condition** or **claim** is reported to the Company within this renewal **extended reporting period** will be deemed to have been made and reported on the last day of this policy's **policy period** of this policy.

VIII. DEFINITIONS

1. **Bodily injury** means:
 - a. physical injury, sickness or disease sustained by any person, including death and, solely with respect to this section 1.a., medical monitoring resulting from any of these; and,
 - b. mental anguish or emotional distress sustained by any person;caused by a **pollution condition**.
2. **Carrier** means any person or entity, other than the **insured** or a subsidiary, parent or affiliated company of the **insured**, engaged by or on behalf of the **insured**, and in the business of transporting property for hire by auto, aircraft, watercraft or rolling stock. **Carrier** includes any current or former member, director, executive officer, partner, or employee of the **carrier** while acting within the scope of his or her duties as such.
3. **Certified Industrial Hygienist** means a licensed professional currently certified per the requirements as established by the American Board of Industrial Hygiene mutually agreed upon by the Company and the **Named Insured** and who has experience in the investigation, assessment, and remediation of similar projects.
4. **Claim(s)** means the written assertion of a legal right received by an **insured** from a third party, including but not limited to **suits** or civil actions, alleging liability or responsibility on the part of the **insured** for **bodily injury**, **property damage**, and/or **cleanup costs**.
5. **Cleanup Costs** means the reasonable and necessary expenses incurred for the investigation, monitoring, testing, removal, disposal, neutralization, or treatment of **pollution conditions** to the extent required:
 - a. by any legislatively or administratively enacted law, rule, regulation or order applicable within the jurisdiction in which the **covered location(s)** lie(s) including any government action or demand pursuant thereto; or
 - b. to satisfy a voluntary cleanup program to conduct voluntary cleanup, removal, or remediation of a **pollution condition** that exceeds actionable levels, established pursuant to a. above; or
 - c. with respect to **fungus** and **legionella**, in the absence of any applicable laws established pursuant to a. above, to the extent recommended in writing by a **Certified Industrial Hygienist** as to Coverage A, or as required by a court for Coverages B, C or D.

Cleanup costs shall include **restoration costs**, but does not include **property damage**, **bodily injury**, or **loss** from **property damage** or **bodily injury**. **Cleanup costs** do not include costs incurred to confirm the discovery of a **pollution condition**. **Cleanup costs** do not include costs for improvements or betterments and shall not include any additional costs to bring the existing **covered location** into compliance with any code, law or regulation that was not applicable and or enforced against the **covered location** before it was affected by the **pollution condition**.
6. **Covered Location(s)** means any location(s) listed in the Declarations and/or listed within the Schedule of Covered Location(s) endorsement attached to this policy.
7. **Defense Costs** means the reasonable and necessary attorney fees, costs, charges and litigation expenses (including the costs of experts) incurred in the defense, investigation or settlement of **claims**.

8. **Emergency Expenses** means the reasonable and necessary costs, charges and expenses, which qualify as **cleanup costs**, incurred by the **insured** to take emergency action to contain, control or mitigate a **pollution condition** that is an imminent and substantial endangerment or threat to the public, human health, or the environment, as defined by the regulating agencies and environmental laws that require immediate response.
9. **Extended Reporting Period** means either the automatic extended reporting period of time, the optional extended reporting period of time or the renewal extended reporting period of time, whichever is applicable, in which to report **claims** following the termination or renewal of coverage as described in this policy.
10. **Fungi / Fungus** means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or by-products produced or released by **fungi**, but does not include any **fungi** intended by the **insured** for consumption.
11. **Insured** means:
 - a. **The Named Insured**;
 - b. Any additional **Named Insured** expressly endorsed onto this policy; or
 - c. Any current or former member, director, executive officer, partner, or employee of the **Named Insured** while acting within the scope of his or her duties as such.
12. **Loss** means a monetary judgment award or settlement of compensatory damages.
13. **Named Insured** means the person, individual, partnership, corporation or entity listed in the Declarations or expressly added as a **Named Insured** by endorsement.
14. **Natural Resource Damage** means the physical injury to, destruction of, or the assessment of physical injury or destruction, including the resulting loss of value of, land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of the fishery conservation zone established by the Magnuson-Stevens Fishery Conservation and Management Act 16 U.S.C.1801 et seq.), any State, Local, Provincial, foreign government, or Native American tribe, or, if such resources are subject to a trust restriction on alienation, any member of a Native American tribe.
15. **Non-owned Disposal Site** means any waste treatment, waste storage or waste disposal facilities, which are utilized by or on the behalf of the **insured** for waste generated from a **covered location**, provided that:
 - a. the **pollution conditions** at the **Non-owned Disposal Site(s)** must first commence on or after the **retroactive date** set forth in the Declarations and/or in the Schedule of Covered Location(s) endorsement attached to this policy, and
 - b. as of the date that the waste was delivered to the waste treatment, waste storage or waste disposal facility, the facilities:
 - (1) Are within the United States of America (including its territories and possessions), Puerto Rico and Canada;
 - (2) Are not owned, operated or managed by the **insured** or any parent, subsidiary or affiliate of the **insured**;
 - (3) Are properly licensed to accept such waste for treatment, storage or disposal;
 - (4) Are not listed, proposed for listing or formerly listed on the federal National Priorities List, State equivalent, or local equivalent list;
 - (5) Are not subject to, and have not been subject to in the previous four years, an information request under Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act or Section 3007(a) of the Resource Conservation and Recovery Act, or a State or local equivalent request; and

(6) Are not owned or operated by a bankrupt or financially insolvent entity.

16. Policy Period means the period of time stated in the Declarations, or any shorter period arising as a result of cancellation.

17. Pollution Condition(s) means any of the following:

- a. The discharge, dispersal, release, seepage, migration, or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, legionella, electromagnetic fields, low level radioactive waste, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater. Waste includes materials to be recycled, reconditioned or reclaimed,
- b. The presence of materials listed in paragraph a. above that have been first abandoned or first deposited illegally on or after the Policy Inception Date by a third party without the **insured's** consent or knowledge, or
- c. The presence of **fungus** on buildings or structures,

Provided the above are in amounts, concentrations or levels in excess of those naturally present in the environment.

18. Property Damage means:

- a. Physical injury to, or destruction of tangible property, including all resulting loss of use of that property;
- b. Loss of use of tangible property that is not physically injured or destroyed but has been evacuated, withdrawn from use or rendered inaccessible because of a **pollution condition**;
- c. Diminution in value of tangible property;
- d. **Natural resource damage.**

Property damage does not include **cleanup costs**.

19. Restoration Costs means the reasonable and necessary costs incurred to restore real or personal property damaged during the work performed in the course of incurring **cleanup costs** from **pollution conditions**, to substantially the same condition prior to those **pollution conditions** occurring. These costs shall not exceed the actual cash value of that part of the real or personal property that was damaged prior to the **pollution conditions** occurring. **Restoration costs** do not include costs for improvements or betterments and shall not include any additional costs to bring the existing **covered location** into compliance with any code, law or regulation that was not applicable and or enforced against the **covered location** before it was so damaged.

20. Retroactive Date means the date set forth in the Declarations which is the earliest date a **pollution condition** can commence for coverage under this policy. If no entry appears or the words Not Applicable or N/A appear in the Declarations, then a **retroactive date** shall not apply.

21. Self-Insured Retention means the dollar amount shown on the Declarations to this policy or as otherwise determined by endorsement, if any.

22. Storage tank system(s) means any tank(s) including any connected piping, ancillary equipment and containment system.

23. Suit means a civil proceeding in which damages to which this insurance applies are alleged. **Suit** includes:

- a. An arbitration proceeding to which the **insured** must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding to which the **insured** submits with our consent.

24. Underground Storage Tank means any tank with associated piping and equipment connected thereto which has more than ten (10) percent of its volume below ground. **Underground Storage Tank** does not include septic tanks, sump pumps, oil/water separators, or storm-water collection systems.

25. Transportation means the movement of **your product** or waste generated by you beyond the boundaries of a **covered location** by a **carrier**. **Transportation** includes the loading and unloading of **your product** or waste to or from a **carrier**.

26. Your Product:

- a. Means any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 1. You;
 2. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:
 1. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
 2. The providing of or failure to provide warnings or instructions.